



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2011-1156]

Change-1 to Navigation and Inspection Circular 01-13,
Inspection and Certification of Vessels Under the Maritime
Security Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Change-1 to Navigation and Vessel Inspection Circular (NVIC) 01-13, Inspection and Certification of Vessels Under the Maritime Security Program (MSP). The MSP serves as a means for establishing a fleet of commercially viable and militarily useful vessels to meet national defense as well as other security requirements. NVIC 01-13 provides guidance to assist vessel owners/operators, Authorized Classification Societies, and Coast Guard personnel with the inspection and certification of vessels under the MSP. This Change clarifies the process for the issuance of the Certificate of Documentation (COD) to the vessel during the reflag process, adds a note to the equivalency provisions

for inspection of MSP vessels subsequent to initial certification, clarifies the trial period requirements for automated systems in machinery spaces, includes interim provisions for those vessels seeking to operate with minimally attended or periodically unattended machinery spaces, and makes other technical changes to NVIC 01-13.

DATES: Change-1 to NVIC 01-13 is effective as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The owner/operator may request an amended Certificate of Inspection to align with Change-1 to NVIC 01-13 at the next scheduled Coast Guard attendance. Documents discussed in this notice should be available in the online docket within three business days of today's publication.

ADDRESSES: To view the documents mentioned in this notice go to <http://www.regulations.gov> and use "USCG-2011-1156" as your search term. Locate this notice in the search results, and use the filters on the left side of the page to locate specific documents by type. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or e-mail Lieutenant Corydon Heard, Office of Commercial Vessel Compliance (CG-CVC), U.S. Coast Guard; telephone 202-372-1208, e-mail

Corydon.F.Heard@uscg.mil. For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826, toll free 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Background and Purpose

NVIC 01-13 provides uniform process guidance to assist vessel owners/operators, authorized classification societies, and Coast Guard personnel regarding the MSP. Vessels that meet MSP eligibility criteria may obtain a Certificate of Inspection (COI) by following the procedures and guidelines detailed in NVIC 01-13. NVIC 01-13 was first published in February 2013. As part of the first annual review, the Coast Guard considered policy guidance enhancements in order to better facilitate the transition of vessels to U.S. registry under the MSP. The Coast Guard published a notice in the Federal Register announcing the availability of the draft changes to NVIC 01-13 and

requested public comments (79 FR 35177, June 19, 2014). Specifically, these draft changes clarified the process for the issuance of the Certificate of Documentation (COD) to the vessel during the reflag process, added a note to the equivalency provisions for inspection of MSP vessels subsequent to initial certification, clarified the trial period requirements for automated systems in machinery spaces, and included interim provisions for those vessels seeking to operate with minimally attended or periodically unattended machinery spaces (MAMS/PUMS), which do not otherwise meet the requirements of 46 CFR 62.50-20 and/or 62.50-30 (as appropriate).

We received eight public comment responses to the June 19, 2014, Federal Register notice. In addition to several general comments, these responses contained numerous specific recommendations, suggestions, and other remarks. We have created a comment matrix that provides a summary of each specific comment and the corresponding Coast Guard response; the comment matrix also lists and explains changes made by the Coast Guard but not prompted by public comments. A copy of this public comment matrix is available for viewing in the public docket for this notice. For more detailed information, please consult the actual public comment letters in the docket. You may access the

docket going to <http://www.regulations.gov>, using "USCG-2011-1156" as your search term, and following the instructions in the ADDRESSES section above.

The basic framework of the draft Change-1 to NVIC 01-13 described above is retained in the final version. The Coast Guard has made some changes from the draft version of Change-1 to NVIC 01-13 to the final version based on the public comments. All changes are underlined in the final version and each changed page is annotated with CH-1 in the footer. We note that several commenters recommended the establishment of a working group to address MSP inspection issues. While the Coast Guard welcomes public input and will continue to champion a transparent and pragmatic approach which factors industry concerns, we believe that the current process of issuing draft policy documents and incorporating public input is the best means of policy development at this time. Some commenters raised general concerns and objections over several key aspects of NVIC 01-13. A discussion of these general concerns is included below, while responses to specific technical issues are contained in the supplementary material available in the docket.

The Coast Guard received several comments asserting that NVIC 01-13 is inconsistent with the purpose and plain

language of the MSP law. Specifically, commenters suggested that pursuant to 46 U.S.C. § 53102(e), a vessel is eligible to receive a COI as long as the vessel continues to comply with international agreements and the associated guidelines of the vessel's prior flag State. Commenters contested the applicability of Title 46, Code of Federal Regulations (CFR) by arguing that vessels in the MSP are solely regulated under applicable international agreements (e.g., SOLAS) and Classification Society rules, specifically with regard to the manning and watchkeeping requirements for periodically unattended machinery space (PUMS). Commenters stated that to the extent that the CFR requirements differ from international conventions and class society rules, they are contrary to the statute.

While we concur that the international agreements are applicable, we disagree concerning the non-applicability of domestic regulations to vessels in the MSP. Sections 53102(e)(1)(A) and (B) of 46 U.S.C. specifically address the basis for accepting foreign construction and equipment standards for the physical ship as a condition for receiving a COI. The MSP law establishes broad equivalencies, rather than an exemption, for equipment and provisioning required by U.S. regulations at reflag. The MSP law does not require the vessel's systems to be

modified in order to meet U.S. equipment carriage requirements. Compliance with classification society rules and the previous flag's laws serve as evidence that the vessel is eligible for reflagging and issuance of its initial COI. The intent of the MSP COI endorsement is to identify this equivalency for equipment and provisioning. Furthermore, the Coast Guard generally will not require the installation of additional equipment as a condition of holding the COI once it was initially issued. However, the statute is silent with regard to operational matters such as manning, watchstanding, record keeping, periodic inspections and casualty reporting.

Unlike the design and equipment requirements needed to obtain a COI, manning and watchstanding provisions, as well as other operational requirements (logbooks, cargo authorities, inspection intervals and certification rules), are described in the various CFR subchapters depending on the vessel type. These regulations apply to MSP ships as they would to any U.S. flag vessel depending on route and service, and serve as the U.S. interpretations of the IMO international instruments since these international regulations intentionally leave many areas to "the satisfaction of the administration." These regulations include provisions for an optional reduction in manning

and/or discretionary authorization for a PUMS. Considering the flexibility afforded by the applicable IMO international instruments, especially in the area of manning, operations, and the scope of flag administration inspections, the Coast Guard recognized the need for consistent MSP inspection procedures for vessel owners, class societies, and marine inspectors, and therefore published NVIC 01-13. Accordingly, the procedural guidance provided in NVIC 01-13 does not establish any original or new requirements, but clarifies the applicability of existing regulations, while incorporating previous and long standing policies.

Some commenters expressed concern that NVIC 01-13 is inconsistent with prior Coast Guard practice and assert that any change in interpretation and formal imposition of new substantive requirements require a rulemaking under the Administrative Procedure Act (APA). The commenters argue that NVIC 01-13 imposes new substantive requirements on MSP operators, and that the Coast Guard has not followed the informal rulemaking process of the APA in enacting it. This, the commenters argue, should invalidate the NVIC, pursuant to *Alaska Professional Hunters Ass'n v. Federal Aviation Administration*, 177 F.3d 1030 (D.C. Cir. 1992).

Specifically, the commenters argue that previous policy guidance stated that MSP vessels will be inspected under special provisions, except that "new installations or modifications to existing systems shall conform to the Coast Guard's interpretation of international regulations," without specifying the meaning of "interpretation"; while the new policy guidance contained in NVIC 01-13 indicated that the Coast Guard's interpretation of international regulation meant compliance with the requirements in Title 46 of the CFR.

We note that *Alaska Hunters'* reasoning was overturned by the U.S. Supreme Court recently in *Perez v. Mortgage Bankers Association* (March 9, 2015). Beyond that, we disagree with this argument on two counts. First, the Coast Guard provided notice and an opportunity to comment on this guidance document, and carefully considered the comments received. The Coast Guard published a draft version of NVIC 01-13 for public comment in the Federal Register on January 19, 2012 (77 FR 2741) and the final version on February 28, 2013 (78 FR 13691). Similarly, the draft version of this change to the NVIC was published in the Federal Register on June 19, 2014 (79 FR 35177), and public comments are being addressed in this notice.

Second, the commenter made this argument in relation to a request for reduced manning requirements for a PUMS. With regard to the manning requirements at issue, NVIC 01-13 does not introduce new policies, but merely clarifies existing policies and, in fact, the changes provide additional flexibility for operators in compliance options.

Notwithstanding the commenter's arguments, the Coast Guard's procedural guidance and interpretations of MSP law have been consistent with respect to the installation or modification to existing systems, since the publication of MOC Policy Letter 1-97, Reflag Inspection and Certification of Vessels Under the Maritime Security Program (MSP). Prior to the issuance of NVIC 01-13, we stated that, with respect to the installation or modification to existing systems, such systems must be replaced with equipment that meets Coast Guard standards (that is, the standards in Title 46 of the CFR). This guidance is clearly stated in the Marine Safety Manual, where we stated that "[a] reduction in manning due to engine automation must be approved and tested as satisfactory in accordance with *U.S. regulations* [emphasis added]."¹ Furthermore, the Coast Guard has applied this guidance to other vessels prior to

¹ Marine Safety Manual, vol. II, p. B1-15.

the promulgation of NVIC 01-13. For example, in 2010, the Coast Guard denied an appeal regarding the MV HONOR's firefighting system for unattended machinery spaces. In our response, we stated that "The HONOR is not required to change the hardware of its accepted [by the classification society] fire fighting system as a condition of holding a COI. It is only a requirement if the plan is to maintain the vessel's periodically unattended machinery space designation."² NVIC 01-13 merely reiterates this existing guidance. Accordingly, it is the view of the Coast Guard that NVIC 01-13 does not represent a substantive alteration or supersede the previous policy interpretations.

In NVIC 01-13, the Coast Guard has sought to provide additional flexibility in respect to the replacement of equipment "in kind" as well as for the proposed acceptance of certain design and technical specifications meeting existing classification society rules as equivalent for the purposes of MSP. This posture has been consistently evident in legacy Coast Guard policies, such as PCV Policy Letter 06-06 Guidance for Ships Reflagged under the Maritime Security Program Participating in the Underwater Survey in Lieu of Drydocking (UWILD) Program. NVIC 01-13

² Letter to C.R. Cushing and Company, January 25, 2010.

has further provided flexibility for vessels transitioning to U.S. registry under the MSP to participate in elective programs such as UWILD and PUMS while coming into compliance with Coast Guard measures designed to enhance the safety of U.S. mariners.

Several commenters recommended that for PUMS, the Coast Guard should accept foreign non-Coast Guard approved equipment and systems that comply with the applicable international conventions as determined by the previous flag state's guidelines provided the vessel's automation and remote population system are in accordance with SOLAS, the previous flag state's requirements, and the vessel's classification society's rules.

As previously noted, the Coast Guard generally will not require the installation of additional equipment as a condition of holding a COI once it was initially issued. For example, under MSP the Coast Guard accepts an attestation from the classification society stating that the automation systems (i.e., power management system, propulsion control system, dynamic positioning system, centralized machinery monitoring and control system, etc.) are designed to meet the failsafe requirements of SOLAS (see NVIC 01-13, Enclosure (2) Section 1.1.3). By contrast, the requirements and authorization to electively

operate with an unattended machinery space rests with the flag administration. However, the Coast Guard received a comment recommending that particular supplemental Alternate Compliance Program (ACP) standards for MAMS/PUMS be incorporated into the MSP guidelines as an alternative to certain requirements in 46 CFR Part 62. The Coast Guard agrees with this comment and has incorporated a general alternative provision into the NVIC change. Additionally, the interim provisions provide for continual MAMS/PUMS operation until the next credit dry dock (not including UWILD) one year from the publication date of Change-1 to NVIC 01-13.

The remainder of comments received were technical in nature, and are discussed in the comment matrix available in the docket. Upon reviewing these specific comments, the Coast Guard has included additional guidance that maximizes flexibility by promoting alternative inspection programs. Principally, revisions were made to streamline the automation approval process, provide a standardized equivalency for design and technical specifications under ACP supplements, and clarify the provisions for servicing certain firefighting equipment and liferafts.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: May 26, 2015.

PAUL F. THOMAS

Rear Admiral, U.S. Coast Guard

Assistant Commandant for Prevention Policy

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